I. Remarks

Reconsideration and re-examination of this application in view of the following remarks is herein respectfully requested. Claims 1-30 remain pending.

The Examiner rejected claims 1-2, 13-16, 22 and 26 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,291,516 to Dixon et al in view of U.S. Publication 2002/0136,278 A1 to Nakamura et al ("Nakamura").

Prior to use under 35 U.S.C. 103(a), reference must otherwise qualify as prior art under 35 U.S.C. 102. Under 35 U.S.C. 102(e), a person shall be entitled to a patent unless the invention was described in an application for patent published under §122(b) by another filed in the United States *before* the invention by the Applicant for patent.

The present invention has a filing date of December 28, 2001, the same as that of the Nakamura reference. While Nakamura claims a foreign application priority date of March 26, 2001, a careful reading of the Manual of Patent Examining Procedure §2136.03 states that a reference's foreign priority date under 35 U.S.C. 119(a)-(d) and (f) cannot be used as the 35 U.S.C. 102(e) reference date. To state this more clearly, 35 U.S.C. 102(e) is explicitly limited to certain references filed in the United States *before* the invention thereof by the Applicant. Foreign applications' filing dates that are claimed in applications which have been published as U.S. or WIPO application publications or patented in the U.S. may not be used as 35 U.S.C. 102(e) dates for prior art purposes. This includes international filing dates claimed as foreign priority dates under 35 U.S.C. 365(a). Therefore, the foreign priority date of the reference under 35 U.S.C. 119(a)-(d) and (f) and 365(a) cannot be used to antendate the application filing date.

In that Nakamura cannot be used as a reference, the rejection under 35 U.S.C. §103(a) is therefore improper and should be withdrawn.

Conclusion

In view of the above remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is requested.

Respectfully submitted,

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